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School Finance Litigation: McCleary v. State of  
Washington

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9-21-2009

**Reporter's Verbatim Report of Proceedings, Monday, September  
21, 2009, Volume XII - Sessions 3 and 4 of 4 [Pages 2664-2743]  
07-2-02323-2**

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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR KING COUNTY

3

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4	MATHEW and STEPHANIE McCLEARY,	)	
	on their own behalf and on	)	
5	behalf of KELSEY and CARTER	)	
	McCLEARY, their two children in	)	SUPREME COURT OF WA
6	Washington's public schools;	)	No. 84362-7
	ROBERT and PATTY VENEMA, on their	)	
7	own behalf and on behalf of HALIE)	)	
	and ROBBIE VENEMA, their two	)	
8	children in Washington's	)	
	public schools; and NETWORK	)	
9	FOR EXCELLENCE IN WASHINGTON	)	
	SCHOOLS ("NEWS"), a state-wide	)	
10	coalition of community groups,	)	
	public school districts, and	)	
11	education organizations,	)	
		)	
12	Petitioners,	)	KING COUNTY CAUSE
		)	No. 07-2-02323-2 SEA
13	vs.	)	
		)	
14	STATE OF WASHINGTON,	)	
		)	
15	Respondent.	)	

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17 REPORTER'S VERBATIM REPORT OF PROCEEDINGS

18 --oOo--

19 MONDAY, SEPTEMBER 21, 2009  
20 VOLUME XII - Sessions 3 and 4 of 4

21 --oOo--

22 Heard before the Honorable John P. Erlick, at King  
23 County Courthouse, 516 Third Avenue, Room W-1060,  
24 Seattle, Washington.

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CYNTHIA A. KENNEDY, RPR  
CSR No. 3005  
Official Court Reporter  
King County Superior Court  
516 Third Avenue, C912  
Seattle, Washington 98104  
  
(206) 296-9188

1                   A P P E A R A N C E S:

2

                  --oOo--

3

4   THOMAS F. AHEARNE, CHRISTOPHER G. EMCH, and  
5   EDMUND W. ROBB, Attorneys at Law, appearing on behalf  
6   of the Petitioners;

6

7   WILLIAM G. CLARK and CARRIE L. BASHAW, Assistant  
8   Attorney Generals, appearing on behalf of the  
9   Respondent.

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## 1 CHRONOLOGICAL INDEX

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4 MONDAY, SEPTEMBER 21, 2009 - Afternoon Session  
(Resumed)

5

ERIN JONES (Resumed)

6

Direct (Resumed) by Mr. Robb 2669

7

Cross by Ms. Bashaw 2708

Redirect by Mr. Robb 2733

8

Recross by Ms. Bashaw 2739

9 Adjourned 2743

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## 1 EXHIBIT INDEX

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4 EXHIBIT ADMITTED

5 295 2721

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1 SEATTLE, WASHINGTON

2 MONDAY, SEPTEMBER 21, 2009

3 AFTERNOON SESSION RESUMED - 3:00 P.M.

4 --oOo--

5 HE COURT: Please be seated.

6 Mr. Robb, if you'd like to call the  
7 petitioner's next witness.

8 MR. ROBB: Yes, Your Honor. The petitioners  
9 would like to recall Mrs. Erin Jones.

10 THE COURT: Very good. Thank you.

11 Ms. Jones, if you will please retake the  
12 stand.

13 Good afternoon. You may be seated. You  
14 remain under oath from your prior testimony.

15 THE WITNESS: Okay.

16 THE COURT: Thank you.

17 MR. ROBB: Your Honor, may I approach the  
18 witness, please?

19 THE COURT: You may, counsel.

20 ERIN JONES (Resumed),  
21 called as a witness herein, having been first duly  
22 sworn, was examined and testified as follows:

23 DIRECT EXAMINATION (Resumed)

24 BY MR. ROBB:

25 Q. Hand you what's been marked as Exhibit 293.

1       A.     Thank you.

2       Q.     Well, first, thank you for coming back and  
3 for continuing to testify here. We are beginning --  
4 at the last -- when last we spoke to talk about the  
5 final report of -- on the plan to close the achievement  
6 gap for African American students.

7             Do you have Exhibit 293, do you have that in  
8 front of you now?

9       A.     Yes, I do.

10      Q.     Okay. Can you briefly explain to me what  
11 this study is?

12      A.     This study is the result of about seven  
13 months of work with House Bill 2722, a committee of 15  
14 members who did research, worked with professionals  
15 around the nation, folks who are experts who would be  
16 considered national experts on the achievement gap and  
17 on the achievement gap for African American students,  
18 and we compiled this report as a result of that work.

19      Q.     Could you please turn to page one of the  
20 report.

21      A.     Okay.

22      Q.     And I'll direct your attention to the second-  
23 to-last paragraph on the bottom where it says "In 2008  
24 the Washington State Legislature passed House Bill 2722  
25 which called for the appointment of an advisory



1 committee charged with creating a plan which, when  
2 fully implemented, will close the education gap for  
3 African American students."

4 Do you see that?

5 A. Yes, I do.

6 Q. Is this study that plan?

7 A. This is that plan.

8 Q. And did the committee that was formed under  
9 House Bill 2722 conclude that this plan, when fully  
10 implemented, would close the achievement gap between  
11 African American students?

12 A. I don't believe that anyone on the committee  
13 would say this by itself would close the gap. I  
14 believe that most people on the committee would say  
15 having six months to develop a plan that no one in the  
16 nation has been able to develop over the last 50 years,  
17 it's probably not adequate. So it was a stab in six  
18 months. I feel like if you were to ask anyone on the  
19 committee did they feel this was a good effort, yes.  
20 Would anyone say that this is all that it's going to  
21 take? No.

22 Q. Okay. So it will take this plus more than  
23 this in order to --

24 A. Yes.

25 Q. -- close the achievement gap?

1 A. Yes.

2 Q. Okay. Do you believe that the achievement  
3 gap can be closed?

4 A. I do.

5 Q. Okay. I'd like to talk about a few of the  
6 conclusions that the Task Force came to. Can you go to  
7 page six -- chapter one, page six.

8 The first -- are you there?

9 A. Yes.

10 Q. Okay. The first sentence there says, "More  
11 than 50 years after Brown versus the Board of  
12 Education, the landmark United States Supreme Court  
13 decision that ended racial segregation in public  
14 schools, most African American children in this country  
15 are still denied the education they need to find  
16 meaningful and well-paying jobs, to thrive in college,  
17 to participate fully in this nation's economic and  
18 civic life, and to join and continue to thrive in a  
19 truly just society."

20 Do you see that there?

21 A. Yes.

22 Q. Why did the commission conclude that?

23 A. The committee concluded that -- it goes back  
24 to when we talked two weeks ago now about the  
25 definition of achievement gap.

1           Achievement gap suggests that it's the  
2 ability of African American students to achieve.  
3 Really, what this paragraph is really speaking to is  
4 that there are system issues that are denying African  
5 American students access to kind of completely use the  
6 resources that are available. And sometimes resources  
7 are not there, that student -- African American  
8 students need to be successful.

9       Q.     So, is it -- am I to understand your answer  
10 correctly, that we don't blame the children for  
11 failures; is that --

12       A.     Yes.

13       Q.     -- correct?

14           It's the system's fault; is that true?

15       A.     I believe -- if you were to ask anyone on the  
16 committee, really, the gap is created by more than just  
17 kids achievement. It's created by systems. It's  
18 created by family circumstances. It's created by a  
19 community. So there are more pieces that play -- go  
20 into play when we talk about the gap than the kids.  
21 And I think the focus has been placed on the  
22 achievement of children. And, really, the focus of  
23 this paragraph is saying that there's more than just  
24 children. The system is one large piece of that.

25       Q.     Let's talk about the achievement gap itself,

1 what you learned.

2 We started to talk last time about the WASL  
3 scores.

4 A. Uh-huh.

5 Q. What do the WASL scores show us about the  
6 achievement gap?

7 A. One of the interesting things that we notice  
8 when we looked at data was that achievement for all  
9 students on the WASL has increased since the beginning  
10 of the WASL. But for African American students -- and  
11 I think there's a place in the report -- I know in our  
12 PowerPoint presentation there was a place where it  
13 demonstrates that the gap actually increases, though,  
14 over time. So even though all students of all ethnic  
15 backgrounds increased in their performance on the  
16 WASL. For African American students, the rate of  
17 increase was much less than the rate of increase for  
18 their Caucasian counterparts or their Asian  
19 counterparts.

20 Q. So, in other words, the gap is widening?

21 A. Yes.

22 Q. Okay. And let's see if you could turn to  
23 page 16.

24 A. Okay.

25 Q. There's the graph -- and I don't believe it's

1 numbered. But the graph here on page 16 depicts the  
2 current passage rates for the WASL, at least as of the  
3 time that this study was done.

4 A. Those meeting standard, correct.

5 Q. Yeah. Okay. So about 20 percent of 10th  
6 grade students were passing -- African American  
7 students were passing the math WASL?

8 A. Correct. Actually, that's the number of  
9 females.

10 Q. Oh, okay. And 18.1 percent of the males.

11 A. Correct.

12 Q. Okay. Is that generally true that the  
13 academic achievement of African American females is  
14 higher than that of African American males?

15 A. In general, across the nation, African  
16 American females outperform males.

17 Q. Is that true here in Washington?

18 A. Yes.

19 Q. Okay. And I notice you have reading and math  
20 here. Is there a reason why you chose to focus on  
21 those two subject areas?

22 A. We found that those were the two that  
23 demonstrated the gap the most clearly.

24 Q. Did you also look at dropout rates?

25 A. We did.

1 Q. Okay. What did you -- was there an  
2 achievement gap in dropout rates?

3 A. Yes.

4 Q. Could you tell me a little bit more about  
5 that, please?

6 A. We noticed that for all Brown children,  
7 African American children, being part of that -- for  
8 African American boys, they drop out at about 50  
9 percent. For African American girls, it's a little bit  
10 less than that, so somewhere in the 30's, whereas  
11 Caucasian students dropped out between 20 and 30  
12 percent.

13 Q. Did the committee look at -- I'm sorry.  
14 Caucasians dropped out at about --

15 A. Between 20 and 30 percent depending on what  
16 you looked at.

17 Q. Okay. Did the committee at all consider what  
18 the ramifications are of having half of the African  
19 American males drop out of school before they  
20 graduated?

21 A. Ramifications on what?

22 Q. On the students' lives.

23 A. We talked about it. It's not included in the  
24 report, but I think all of us have children or know  
25 people who haven't graduated and we definitely had

1 discussion about the economic impact and just the  
2 personal impact on students who didn't graduate.

3 Q. Briefly, what was that?

4 A. Well, there are a number of different  
5 things. The students -- African American boys, in  
6 particular, who drop out of school have -- I think are  
7 80 percent more likely to be incarcerated at some  
8 point, which is a huge impact, obviously, on a young  
9 male's life. The numbers are not as high for young  
10 women, but they're growing, actually, in number in our  
11 state.

12 And I want to say that our state is one of  
13 the top states that incarcerates African American  
14 males. So that's --

15 Q. We incarcerated more African American  
16 males --

17 A. We have a larger percent --

18 Q. Percentage --

19 A. Yes.

20 Q. -- in the United States?

21 A. Around the nation.

22 We have a around the nation, yeah. So that's  
23 a huge impact. That's something that we talked about.  
24 We just talked about the economic impact of our young  
25 people not being able to get work because they drop out

1 of school and not going to college at the same rates as  
2 their counterparts.

3 Q. Okay. And did you look at the college going  
4 rates of --

5 A. Yes --

6 Q. -- African Americans?

7 A. -- we did.

8 Q. What did you discover?

9 A. We discovered that our students go to college  
10 at -- I don't remember the exact percentage right now.  
11 I can actually see it. It's about 48 percent of our  
12 students go on to college. But that's of those  
13 students who actually make it through high school.

14 Q. Oh. So of the 50 percent that make it  
15 through high school, about 48 percent of those students  
16 actually go on to college.

17 A. Yes. And if you average males and females,  
18 we graduated about 60-something percent -- well, high  
19 50's actually. And then of those -- right, then about  
20 48 percent of those go on to college.

21 Q. Okay. Did you also look at the placement of  
22 students -- African American students into special ed  
23 and gifted programs?

24 A. We did.

25 Q. And what did you find on those scores?



1       A.     Very disproportionate numbers.  So we have  
2 one of the highest percentages of students going -- I  
3 want to say 16 percent of our students go into special  
4 education even though we only represent six percent of  
5 the population.  And I don't remember the exact number,  
6 but I want to say two percent in gifted programs.

7               So, we're underrepresented in gifted programs  
8 an overrepresented in special education.

9       Q.     Okay.  And when you say underrepresented,  
10 what do you attribute that to?

11      A.     Access to information.  I actually happen to  
12 have a gifted son, and because I'm an educator and  
13 because I knew to go ask and to fight when we were told  
14 he couldn't get into gifted, I knew to fight and go to  
15 the school district, and I knew the system.  A lot of  
16 our parents don't know what gifted programs are and  
17 then don't know exactly the process for getting into  
18 gifted programs.  For a lot of students, they're  
19 recommended by a teacher, and our students tend to not  
20 be recommended by teachers into gifted programs.

21      Q.     Did you reach any conclusions about why that  
22 might be?

23      A.     Just kind of the typical -- I would say the  
24 committee would say that there's some racism involved  
25 in that or some ignorance about could our students

1 actually -- were they capable of doing honor-level work  
2 and gifted level work. So there's still a lot of  
3 ignorance around what Brown children are capable of  
4 doing.

5           So there's the stereotypical Asian kids are  
6 always good at math and they're smarter, and then  
7 there's the know stereotypical African American kids  
8 are thugs, and that go -- as we talked as a committee,  
9 I would say that probably a lot of people would say  
10 there's a lot of that ignorance still. Race plays a  
11 role in the decisions that are made.

12       Q.     So, self-fulfilling low expectations, is that  
13 another way to put it?

14       A.     Self-fulfilling low expectations would  
15 suggest that the students have low expectations  
16 themselves.

17       Q.     Oh, I'm sorry. Of the teachers.

18       A.     Yes.

19       Q.     Yeah.

20       A.     Yes. Low expectations of the teachers.

21       Q.     Okay. What about the overrepresentations in  
22 special education programs?

23       A.     So, what is your question?

24       Q.     Opposite side of the same coin?

25       A.     Okay. I would say that, as we talked, as we

1 talked with teachers, as we talked with other  
2 educators, as we talked with parents, because we did  
3 town hall meetings everywhere, one of the things that  
4 came out of that -- and it was informal research, but  
5 African American boys, in particular, tend to be louder  
6 and a little more gregarious, and, because of that,  
7 they often were targeted for special education  
8 programs, not based on their academic abilities but  
9 based on behavior.

10           So behavior often determines their entrance  
11 into a special education program instead of academic or  
12 intellectual ability. And then once they were entered  
13 into those programs, parents didn't really understand  
14 the impact of that and didn't know how to get their  
15 kids out of the program.

16       Q.     Were there any other measures of the  
17 achievement gap that the committee looked at besides  
18 the ones we talked about already?

19       A.     We talked about remediation, but you didn't  
20 bring it up when we talked about college preparation.

21       Q.     Okay. Tell me, briefly, about those, please.

22       A.     Okay. Remediations are really -- our  
23 students, even the ones that graduate then, require  
24 greater levels of remediation, particularly in math.  
25 So students who graduated with a diploma that says they

1 passed all the required courses in high school are  
2 still at high levels, somewhere in the 40 percent,  
3 being required to take classes below the 100 level. So  
4 they're paying for classes at a level that their  
5 diploma would say they've passed the classes already.

6           So how do we assure that students are getting  
7 what they need in their high school programs?

8       Q.     So those remediation classes, the students  
9 have to pay for them?

10      A.     Yes.

11      Q.     Do those classes count towards the students'  
12 either AA or bachelor's degree?

13      A.     They do not. And, oftentimes, if the student  
14 did receive a scholarship towards college, they would  
15 end up using up their scholarship monies towards those  
16 sorts of classes first so that when they get to the  
17 end, there's a danger that they wouldn't have the  
18 resources needed to finish out their program.

19      Q.     Did the committee look at whether the  
20 ultimate graduation rates of students who are required  
21 to take remediation classes before proceeding on to  
22 college?

23      A.     We did not look at that.

24      Q.     Okay. Tell me about the college attendance.  
25 What did you find in rates of college attendance?

1       A.     We found that our students attended college  
2     at a rate of about 48 percent, but one of the things we  
3     discovered, and I don't think we included the data in  
4     the report, is even those students that got to college  
5     didn't necessarily complete college. Particularly in  
6     our state there was a large percentage of those  
7     students that only finished a freshman year, only  
8     finished the sophomore year and then dropped out of  
9     their college program. So that was a concern, too.

10           And the seven months we had, we didn't have  
11     time to really focus on that issue, but it was an issue  
12     that was raised.

13       Q.     So did the committee conclude that these gaps  
14     are pretty serious?

15       A.     Yes.

16       Q.     Okay. And did the committee come up with an  
17     action plan to try and address these gaps?

18       A.     Yes, they did.

19       Q.     Okay. Could we turn to page 10, please, of  
20     the report.

21           There is a bold heading about half way down  
22     the page that says, Cause of the Achievement Gap. It  
23     says, "The achievement gap impacting African American  
24     students is caused primarily by" -- and then there's a  
25     number of bullets.

1           Are those six or so bullets what the  
2 committee determined were the primary causes of the  
3 achievement gap for African American students?

4       A.     Yes.

5       Q.     Okay. The first one says, "Inequitable  
6 distribution of skilled, experienced teachers."

7           What does that mean?

8       A.     When we looked at the distribution of  
9 teachers in our state and then we looked around the  
10 nation as well, we found that our schools that had the  
11 largest percentage of African American students had the  
12 least -- the lowest percentage of experienced teachers,  
13 the lowest percentage of teachers teaching in their  
14 content area, meaning that we had the largest  
15 percentage of first- and second-year teachers who were  
16 just beginning their careers and also the largest  
17 percentage of teachers teaching out of their  
18 endorsement area at least one period of the day.

19       Q.     And how does that contribute to the issue of  
20 the achievement gap?

21       A.     Well, if you -- having been a teacher -- if  
22 you're in your first year, you're still trying to  
23 figure things out. And often, in our state, the  
24 majority of teachers are Caucasian teachers and they  
25 tend to be middle class. So you're talking about

1 putting a middle-class Caucasian teacher in a classroom  
2 that is dominated by African American students. The  
3 teacher's trying to figure out how to be a teacher of a  
4 content, but also how to communicate in a cultural  
5 language or in a cultural framework that's very  
6 different from what they're used to. And that's a very  
7 complicated thing to ask any 22, 23 year old to do.

8 Q. So does that -- the committee concluded that  
9 that leads to less effective teaching?

10 A. Yes. They decided to -- determined that,  
11 really, our students needed the best -- the most  
12 experienced teachers with the best knowledge of their  
13 content area.

14 Q. Did the committee determine whether that  
15 problem could be fixed if the right resources were  
16 brought to bear?

17 A. Yes. Resources and policy were two of the  
18 things that were determined to play a role in that.

19 Q. What specific recommendations did the  
20 committee make to correct this deficiency?

21 A. There were no official recommendations made,  
22 but I know that some of the suggestions were that  
23 school districts be able to move staff based on their  
24 demonstrated excellence with students. Teachers that  
25 were effective, could we move those teachers to a place

1 where students really needed that -- that expertise.

2 Q. So --

3 A. So we talked about that. Go ahead.

4 Q. So move the best teachers to where they're  
5 needed the most?

6 A. Yes.

7 Q. The second bullet down is insufficient and  
8 inequitable school funding.

9 How does that contribute to the achievement  
10 gap?

11 A. When students, particularly in urban  
12 communities that are from poor communities, don't have  
13 accesses to adequate resources -- and it could be  
14 books, for example.

15 I can think of one school that has one class  
16 set of a literature series and, yet, there are five  
17 classes. So there's no ability for kids to take the  
18 books home, which means, for example, if you're taking  
19 an AP class and you can't take the book home, are you  
20 really ever going to finish that book? And that puts  
21 you at a disadvantage in terms of taking that exam and  
22 passing it if you haven't had a chance to really have  
23 access to that material.

24 Q. Did the committee make any recommendations  
25 regarding either insufficient or inequitable school



1 funding?

2       A.     You know, we didn't make any official  
3 recommendations primarily because of the economic  
4 climate. And it was -- everyone was very aware that  
5 there were very limited resources. So the committee  
6 determined that our recommendations really, kind of,  
7 lead towards the day when there weren't resources  
8 available that we could really put resources toward,  
9 kind of, better distribution of teachers and making  
10 sure that we could pay the best teachers to be in the  
11 community.

12       Q.     So it wasn't that you determined resources  
13 wouldn't matter; is that correct?

14       A.     Yes.

15       Q.     Your conclusion was, at this time, this just  
16 wouldn't be politically possible to make the kind of  
17 resources?

18       A.     Right. It wasn't -- it wouldn't be wise to  
19 make recommendations that we knew couldn't be funded.

20       Q.     Even though they would help the achievement  
21 of children --

22       A.     Yes.

23       Q.     -- going through the system?

24       A.     That is what the committee determined.

25       Q.     Okay. Now, you got insufficient and

1 inequitable school funding.

2           What was inequitable about the funding?

3       A.     Looking at -- if you look at schools that are  
4 in wealthier communities versus schools in urban  
5 communities, there were a lot of inequities. Within a  
6 single school district, you could have one school on  
7 one side of town that has a swimming pool and has all  
8 kinds of after-school resources and then a school on  
9 the other side of that same town and the same district  
10 that doesn't have any after-school activities.

11           And just, feeling as a committee, that that's  
12 not -- that's not fair that just, based on where you  
13 live, you have access to all these resources, but  
14 because you live on this side of the street, you don't  
15 have any resources available to you.

16       Q.     So your zip code shouldn't determine the kind  
17 of education you have?

18       A.     That was basically what the economy  
19 determined.

20       Q.     Did you make any findings as to which of  
21 those two kinds of schools more African American  
22 students were in?

23       A.     Well, I would say that the data pretty  
24 clearly showed that the African American students and  
25 the large percentage schools were in the poorest

1 schools with the less resources.

2 Q. Okay. And then insufficient school funding,  
3 is that just the overall lack of resources available to  
4 the schools?

5 A. Yes.

6 Q. Going down to the third bullet. Inadequate,  
7 obsolete, and unbalanced distribution of facilities,  
8 technology, and instructional materials.

9 Why did the committee determine that that was  
10 a cause of issue to look at?

11 A. One of the things that we talked about -- we  
12 had a number of educators on the committee, and we  
13 talked about materials now have been selected to align  
14 with the standards -- the state standards to make sure  
15 that our students are actually learning what we say is  
16 important.

17 Well, if a district doesn't have the  
18 resources to buy curriculum that matches the standard,  
19 then they are at a disadvantage. Those students are at  
20 a disadvantage.

21 Q. And are there districts that are in that  
22 situation?

23 A. Yes. I couldn't name them right now. I  
24 don't have those in my head.

25 Q. That's fine. I won't ask you those kinds of

1 details.

2           So how does that -- I mean, how does, for  
3 instance, inadequate facilities contribute to the issue  
4 of the gap?

5       A.     For example, if you had a facility, for  
6 example, where you have 31 students in a classroom  
7 that's the size of maybe this little area up here and  
8 the students were sitting on top of each other because  
9 the rooms aren't large enough, that makes learning  
10 difficult for students. Which means that a lot of  
11 students aren't going to be engaged, and it just makes  
12 for a very complicated environment to learn in. So  
13 that's -- when we talk about facilities, that's one of  
14 the aspects of it.

15           Also, having access to music rooms and a nice  
16 athletic facility so that students -- because the  
17 students' education, I think the whole committee would  
18 say, is more than just reading, writing, math, and  
19 science, that they need to have access to the arts and  
20 to things that really -- for Brown folks are really  
21 important to culture. So that is another piece of  
22 facilities that need -- our students need to have  
23 access to those kinds of programs.

24       Q.     Did you find that students don't have access  
25 to those kind of things right now?

1       A.     In many cases, yes.

2       Q.     Okay.  And what about obsolete technology?

3       A.     There were -- and I don't remember exactly  
4 where we -- where this was pulled from, but there were  
5 examples of schools that were still using computers  
6 from 10 years ago, which -- I mean, at this point,  
7 technology changes every -- really every year.  But  
8 every two or three years, that technology needs to be  
9 renewed, and there were schools -- examples of schools  
10 that were still using the computers from 10 years ago  
11 that really are obsolete.  The programs don't match the  
12 material that we're using now.

13      Q.     And then instructional materials, did you  
14 find data in the instructional materials as well?

15      A.     Well, I think that goes, again, back to  
16 curriculum and textbooks that are not -- that don't  
17 align with standards.

18      Q.     Did the committee determine whether these  
19 problems we've just been talking about could be  
20 remedied with additional resources?

21      A.     I believe the committee was really clear that  
22 we could -- either through additional resources or  
23 really realigning resources.  So taking one of the  
24 issues that came up often was Title One funding really  
25 directed to the students that it's supposed to be

1 directed to, so could we look at funding streams that  
2 are in existence currently and redirect some of that  
3 funding towards these issues.

4 Q. The next one in, inequitable access to  
5 demanding and rigorous, precollege course work, tell me  
6 about that.

7 A. One of the things that we found in the  
8 research, and just from a lot of our own experience and  
9 experiences of the people on the committee, was that  
10 oftentimes our students were sent into courses that  
11 were kind of the basic-level courses and not pushed to  
12 pursue AP or honors classes. When they came in as  
13 freshman, they were told to take the easier classes,  
14 and we can see if we can boost you up later and then  
15 later never happens. So they ended up in kind of those  
16 remedial courses, the basic-level courses instead of  
17 being pushed into rigorous, honor-level courses.

18 Q. And how does that contribute to the  
19 achievement gap?

20 A. Well, oftentimes, if you have really  
21 intelligent, academically savvy students who are  
22 African American, and they're being stuck in a basic-  
23 level class, then they disengage. And that contributes  
24 to our dropout problem, it contributes to kids getting  
25 C's who probably could get A's but, you know, why

1   bother.   Just this feeling that nobody believes I can  
2   do anything better so I might as well just kind of  
3   maintain the status quo.

4       Q.     And did the committee make any  
5   recommendations about how to close that gap?

6       A.     We recommended several programs that  
7   contribute to closing that gap, like, Gear Up and AVID  
8   were a couple programs that really transformed that  
9   mentality of the school into really pushing all kids in  
10  the school towards those upper-level or higher-level  
11  courses.

12      Q.     And, as you did your work for this committee,  
13  did you find examples of schools or programs where they  
14  closed that achievement gap?

15      A.     I would say not where they closed the gap, or  
16  where they were closing the gap, we found examples in  
17  programs, like MESA, as really closing the gap with  
18  math and science.  AVID, there's several places in our  
19  state, and then around the nation, where they're  
20  closing the gap in all subject areas.  And then the  
21  numbers of students graduating and going to college.  
22  Gear Up is another program.  So we did find examples  
23  where the gaps were in the process of being closed.

24      Q.     But overall in this state the gap is  
25  widening --

1       A.     Yes.

2       Q.     -- at this point?

3       A.     At least as is related right to WASL scores  
4 and dropout numbers.

5       Q.     And dropout rates as well?

6       A.     Uh-huh.

7       Q.     So institutional racism is the next bullet.

8       A.     Uh-huh.

9       Q.     How is that a cause of the achievement gap?

10      A.     Oh, gosh. We could do a dissertation on that  
11 one, but just to give you a couple of examples of  
12 that.

13             If we talk about educators and the role that  
14 educators play in the lives of students, for a lot of  
15 African American educators, they butt up -- one of the  
16 things that we found in our study was that the impact  
17 that an African American educator has on African  
18 American students, it has a really positive impact.

19             Well, when African American educators are  
20 pushed out of the system for a variety of reasons, they  
21 tend to be the first to go, particularly now in these  
22 economic times, they're the newest into the field and  
23 first out because of cuts. So we lose -- we lose those  
24 people right away.

25             A lot of times those folks are passed over



1 for administrative jobs, and students see that. They  
2 see that, for educators, school is not a positive place  
3 to be as an African American, so for a lot of our kids,  
4 instead of serving as role models, they serve as  
5 another example of not having hope, and that really  
6 leads to the gap over time.

7 Q. And did the committee make any  
8 recommendations for addressing that institutional  
9 racism?

10 A. We didn't get there. That's one of those  
11 things that we had to kind of leave on the back burner  
12 at the time.

13 Q. Did you make any recommendations about  
14 involving -- programs to involve families --

15 A. Yes.

16 Q. -- or the community and --

17 A. Yes.

18 Q. Okay. Tell me about those.

19 A. Well, another way that the institutional  
20 racism plays itself out is just in the ways that  
21 families are communicated with or not communicated  
22 with. And one of the recommendations we made was that  
23 schools need to be very intentional about communicating  
24 with families, because one of the things we found is  
25 that schools really had two ways of connecting with

1 families, parent-teacher conferences, open house.  
2 Maybe if a kid has an extracurricular activity, which  
3 assumes that that's how African American families  
4 communicate. And, really, that's what the committee  
5 would say, that's a very White, middle-class system of  
6 reaching out.

7           And so the recommendations we made were that  
8 schools begin to think outside the box and think about  
9 how can you go out into the community and communicate  
10 with families. Could they do more face-to-face  
11 communications with families, not expect everyone to  
12 come to you, not just send e-mails home.

13           One of the things that we talked about is  
14 Brown folks don't tend to communicate via e-mail or on  
15 paper as much as White people do. But schools tend to  
16 communicate that way. So could we help schools really  
17 think outside the box and think about doing a better  
18 job of engaging some community leaders, to maybe help  
19 with that communication process.

20       Q.     Why is it important for schools to undertake  
21 that effort to engage families?

22       A.     Parent involvement and family engagement,  
23 when you look at all the research is one of the number  
24 one ways to address the achievement gap, Dr. Karen  
25 Mapp, who's one of the nations foremost experts in the

1 field, that's her dissertation. It's one of the things  
2 that she talks about in her dissertation.

3           If you talk to Joyce Epstein at Johns Hopkins  
4 University, it's another thing that she talks about all  
5 the time, that that really has the greatest impact on  
6 student achievement is how well the families are  
7 engaged in the system.

8           And there's an assumption by the school  
9 system that families need to come in and engage. And,  
10 really, the committee and when we looked at all the  
11 research, it has to a partnership. So there has to be  
12 dialogue both ways and in a variety of ways. And that  
13 needs -- in order to address the achievement gap, we  
14 have to have families understanding how the system  
15 works and, really, how to support their children in  
16 that system. If they don't understand how the system  
17 works, then they can't advocate for their children if  
18 their children aren't getting what they need.

19       Q.     Why do the parents need help to understand  
20 how the system works?

21       A.     Variety of reasons, I think. First of all,  
22 if you talk about African American parents, this gap  
23 has been around for a long time, and for many of them  
24 school was not a positive place for them, nor for their  
25 forefathers. So you're talking about a group of folks

1 who did not have positive experiences themselves with  
2 school, so engaging with the school in a traditional  
3 manner is a very difficult thing.

4           The other reality is 20 years has changed a  
5 lot about education and about how we communicate. So,  
6 you know, we have the WASL now, and we have all these  
7 standards now, and EALRs now, and those weren't around  
8 before. And a lot of our families don't really  
9 understand how you would even go through the process of  
10 figuring out those things.

11           So we really -- we really felt, as a  
12 committee, like we need to, as a state, make those  
13 things transparent for people so they know how to gain  
14 access to those materials and resources and how does a  
15 school work, and how would someone go in and advocate  
16 for a child. What is special education? What is a 504  
17 plan? Making those things more transparent for  
18 families.

19       Q.     And that's one of the things that you found,  
20 is one of the primary ways you could address the --

21       A.     Yes.

22       Q.     -- achievement gap?

23       A.     Yes.

24       Q.     Okay. And then the final bullet point under  
25 these primary causes is the lack of cultural competence

1 among teachers, school staff, administrators,  
2 curriculum, and assessment developers in the school  
3 system itself.

4           Unpack that for me a little bit, if you  
5 would.

6       A.     There's another dissertation. Try to do this  
7 in short form.

8           Really, cultural competence is not only  
9 understanding the diversity of cultures that exist  
10 within a community, but understanding that and allowing  
11 that to help you change your practice.

12           So, cultural competence as it pertains to a  
13 classroom is really understanding how do I communicate  
14 information in such a way that everyone in my class  
15 understands it. So, am I speaking the kind of English  
16 that all kids understand. Am I doing the kinds of  
17 activities that are going to engage all the students in  
18 my classroom. When I do discipline, am I doing  
19 discipline in a way that the students will understand  
20 and respect that form of discipline.

21           Let me give you an example. For example,  
22 within an African American boy -- first of all, you  
23 should never call him boy. That's number one, and  
24 you'd think people would know that at this point. But  
25 just the way that teachers address African American

1 children is really critical.

2           Look me in the eyes is another piece. White,  
3 middle-class culture, it's expected out of respect that  
4 you look someone in the eyes when they're talking to  
5 you. For an African American boy, if he has a  
6 Caucasian teacher, particularly a female, 40 years go,  
7 if his father or grandfather were to look a White  
8 female in the eyes, he could be lynched. So African  
9 American boys learned really early on not to look a  
10 White teacher in the eyes. But what happens in the  
11 schoolroom setting is that, as soon as a boy's not  
12 looking a teacher in the eyes, the teacher insists,  
13 look me in the eyes, look me in the eyes when I'm  
14 talking to you, and assumes that there's disrespect  
15 happening when, really, this boy has learned from his  
16 father and from his father's father that that's a  
17 really dangerous thing.

18           And that's one silly little example, but it  
19 helps to illustrate how simple those little pieces --  
20 how great an impact that could have. Because what  
21 happens with that child then is he's out in the office  
22 or he's out in the hallway now because he's been  
23 disrespectful when, really, he may have been attempting  
24 to be respectful.

25       Q.     Okay. Did the committee look at how that

1 lack of cultural competency might be remedied?

2 A. Yes.

3 Q. And what did you conclude?

4 A. The committee determined that all educators,  
5 in-coming educators and educators that have been there  
6 for a career, needed more training in cultural  
7 competency, and, really, specific training to that  
8 particular community. So, for example, African  
9 Americans on the east side of the state are going to be  
10 a little bit different than urban African Americans  
11 here. So how can we support the training of African  
12 Americans -- or teachers who are teaching African  
13 American students.

14 And one of the outcomes of that is 5973. And  
15 the work around cultural competency that the  
16 Professional Educator Standards Board has been asked to  
17 do now, to develop cultural competency standards for  
18 teachers throughout their continuum.

19 Q. So professional development is important to  
20 getting beyond this competency problem?

21 A. Yes.

22 Q. Okay. And did you recommend a certain amount  
23 of days or time for this professional development?

24 A. You know, that's a difficult piece. I think  
25 there are a lot of folks that would say -- well, what's

1 happening right now is a lot of people get a three-hour  
2 course in cultural competence, which is very dangerous  
3 because you know just enough to be really dangerous.

4 Q. So that's not enough.

5 A. That's not enough. I liken it to -- I speak  
6 four languages, and I liken it to learning foreign  
7 languages, that, you know -- when I came to America  
8 when I was 18 years old and I told people I spoke four  
9 languages they would say, oh, I speak Spanish, too.  
10 And their idea of speaking Spanish was (speaking  
11 Spanish), and, you know, that's what they understood to  
12 be fluent, whereas I had -- I played basketball in  
13 Mexico. I mean, I could have full conversations with  
14 people.

15 It's the same thing when we talk about  
16 cultural competence. There's this misunderstanding  
17 that you can become culturally competent in one, three-  
18 hour course, but it's very much like the language. You  
19 don't learn to speak a language in three hours nor do  
20 you learn to speak a language really in 20 hours. You  
21 learn to speak that language over many, many hours of  
22 time and many experiences. It's not just the classroom  
23 setting that makes you fluent. It's getting outside of  
24 that setting and actually using the material that  
25 you've learned in the setting and putting it to



1 practice. That's what makes you fluent.

2 And I would say, when we talk about  
3 professional development, we're not talking about a  
4 three-hour course, and we're not talking about three,  
5 three-hour courses. We're talking about how could you  
6 sustain that kind of learning over time.

7 Q. Did you make any recommendations as to how to  
8 sustain that over time?

9 A. We didn't, but that was the work that we  
10 pushed towards PESB because they're the ones in our  
11 state that really determine what needs to be learned at  
12 what point in a teacher's career.

13 So that's the work we're doing currently.

14 Q. Okay. Was additional funding provided this  
15 last legislative session to make those kinds of  
16 professional development opportunities available?

17 A. Additional funding was given to develop the  
18 standards for that. We do not have additional funding  
19 yet for doing the actual professional development.

20 Q. For actually doing it?

21 A. Yes.

22 Q. Okay. Let's turn to page 8 real quick.

23 A. Okay.

24 Q. The second sentence in says, "This is the  
25 call to action." It says, "In this knowledge-based

1 century, we just simply cannot settle for an education  
2 system in which success can be predicted based on race  
3 and income."

4 Is that what we have now?

5 A. That is what we have now.

6 When I was talking earlier about zip codes,  
7 zip codes and race are the greatest determiners of  
8 student success currently.

9 Q. Okay. But did you determine, as a committee,  
10 whether the achievement gap is attributable to income  
11 only or whether it is also attributed to race?

12 A. We determined very clearly that the  
13 achievement gap is not attributed to income only, and  
14 that has been the message for years, that it's a poor-  
15 kid issue.

16 But one of the things we learned from  
17 Dr. Ronald Ferguson from Harvard University was that  
18 actually the achievement gap is greater in the middle  
19 class. Actually, the more money you make, the greater  
20 the gap is between African American and Caucasian.

21 So that debunks the whole myth that it's  
22 about poverty, so -- which terrifies me because I have  
23 three middle-class kids. So it was a little terrifying  
24 hearing that, seeing the data.

25 Q. This paragraph goes on to say, "At a time

1 when every child's future and our future as a nation  
2 depends on educational success, we are surely called to  
3 come together and climb this next mountain."

4           What's happened since this study was  
5 finished?

6       A.     Several exciting things. Several folks from  
7 this study group and from the other achievement gap  
8 study groups continue to work together and continue to  
9 meet together just to kind of keep the issues in the  
10 forefront. So they've met with Superintendent Randy  
11 Dorn on several occasions and, really, it helped him  
12 kind of push it to the top of his -- it wasn't even on  
13 his agenda. So it was not -- wasn't even in his frame  
14 of reference, really, until these studies were  
15 reported. He attended African American Legislative  
16 Day, got to hear three or four times about the report  
17 and said, oh, my gosh, we have to do something.

18           Until that time, really, dropouts were his  
19 biggest -- was his biggest push, and then he realized  
20 this is really a huge issue in our state. We've got to  
21 do something about this. So, he realized that and  
22 began to meet with me on a regular basis. I was  
23 promoted and he pushed resources in the direction of  
24 addressing the achievement gap, which is a really big  
25 deal. He created a new position just to focus on the

1 achievement gap.

2           And then, in addition to that on the  
3 legislative side, Bill 5973 was passed, really calling  
4 together a committee of legislators, the Ombudsman's  
5 Office, our office and then five representatives from  
6 the different ethnic communities to serve as a  
7 oversight and accountability group around this work and  
8 to really take a look at what is OSPI doing, what is  
9 the state doing, what kind of recommendation can we  
10 make, really at the policy level, to make changes  
11 across the state.

12       Q.     So the state's continuing to monitor and  
13 study this issue?

14       A.     Yes.

15       Q.     Were additional resources provided in the  
16 last legislative session to address the achievement  
17 gap?

18       A.     Yes.

19       Q.     What are those?

20       A.     5973 I think had a fiscal net of about  
21 \$112,000 attached to it.

22       Q.     Is that sufficient to deal with this problem?

23       A.     No, it's not sufficient to deal with the  
24 problem.

25       Q.     Is it close?

1       A.     It's not close.

2             I think the message was -- the thing that  
3 we're afraid of is that the bill, when the reports,  
4 when they were finished, would sit on someone's desk  
5 and nothing else would come of them.

6             So the piece that really excited me was that,  
7 even though we didn't get enough in the fiscal climate,  
8 the economic climate that we're in to get anything, I  
9 was pretty happy about.

10            Now, could we do more? Sure, we could do  
11 more. But it was exciting to get anything and that  
12 it's still on the minds of the legislators. We have  
13 two of the education, like, the head of the Education  
14 Committee for the House and the Senate are both on the  
15 committee, the Achievement Gap Committee. So for this  
16 to be part of their everyday work is very exciting,  
17 that this is something they're hearing about, they're  
18 hearing from the community. So it's not just sitting  
19 on someone's desk somewhere.

20       Q.     Is there more pressing problems in the  
21 education system today than this achievement gap?

22       A.     I don't believe so. I believe this is  
23 really -- when I talked with Superintendent Dorn one of  
24 the things I always say is, because it's such a -- a  
25 large problem, if we were to address it and make gains,

1 it would be the most visible change in our state.

2           And, really, what we believed when we put  
3 together this report, is all of the strategies that we  
4 laid out are really good for Caucasian students as  
5 well, and they're good for Latino students as well, and  
6 they're good for Native American students as well. So  
7 we didn't ask for anything that we believed would be  
8 damaging to any other children. We asked for things  
9 that we believed would be good for all children. They  
10 are particularly good for African American children but  
11 really would address the needs of all the students in  
12 Washington state and increase the achievement of all  
13 students.

14           MR. ROBB: Great. I have nothing further  
15 right now. Thank you.

16           THE WITNESS: Thank you.

17           THE COURT: Thank you, Mr. Robb.

18           Cross-examination, Ms. Bashaw.

19           CROSS-EXAMINATION

20 BY MS. BASHAW:

21       Q.     Good afternoon, Ms. Jones.

22       A.     Hello.

23       Q.     Actually, I'm going to Exhibit 293. It's in  
24 that notebook, right?

25       A.     Yes, it is.

1 Q. So I want to follow up on a few questions  
2 with Exhibit 293.

3 On page four under the goals --

4 A. Okay.

5 Q. -- and then I think also on -- we could use  
6 it. Under goal -- well, actually, they do all  
7 reference the notion that to address what you call the  
8 opportunity gap rather than achievement gap, and I  
9 appreciate the distinction, that there's a period of  
10 time that you've identified in your recommendations  
11 2014 as a benchmark, and then under graduation rates,  
12 100 percent by 2018.

13 Do you see that?

14 A. Yes.

15 Q. What was the purpose for the committee  
16 recommending these phase-in periods?

17 A. Well, there are a couple different reasonings  
18 behind that. Number one, the problem hasn't been  
19 addressed yet at this point, to ask schools to suddenly  
20 make all of these changes in a year was really a lot to  
21 expect.

22 So we wanted to give schools enough time to  
23 begin doing the professional development, to begin  
24 really thinking about how to restructure, to begin  
25 helping students to think about themselves a little bit

1 differently, engaging families differently. And we  
2 felt like these numbers really represented a realistic  
3 amount of time to address these issues.

4           The other piece was, we wanted to be able to  
5 go back and measure, so how far have you gotten by this  
6 time. Because we felt like if we just said, okay, no  
7 more dropouts, that we could push that out into the  
8 great beyond and there would never be a measuring  
9 sick.

10           So we felt like, as a committee, it was  
11 really important to have some sort of a measuring tool  
12 that we could say, okay, we've gotten this far now, and  
13 the next two years we've got to get this far.

14       Q.     All right. Did the committee consider  
15 whether there were things that could be recommended  
16 that didn't require the influx of new money, new  
17 funding?

18       A.     We did. When we looked at our  
19 recommendations, we tried, to the best of our ability,  
20 to recommend things that didn't require extra resources  
21 because we knew there were no extra resources to be had  
22 in the Legislature of this session. One of the things  
23 that was recommended was can we look at existing  
24 resources, whether they come from the federal level or  
25 the state level. Could we look at repositioning some



1 of that money, redirecting some of that money that  
2 already exists.

3 Q. And what did you determine about that?

4 A. Well, we determined that, really, OSPI needs  
5 to look at the use of its funding, especially Title One  
6 dollars and figure out how can we make sure that those  
7 dollars are really reaching our students. Because they  
8 say in their -- kind of in their laws and their  
9 structure, they say that those moneys are supposed to  
10 be directed towards our students, and we found a lot of  
11 times in districts that those monies were not being  
12 spent towards our kids.

13 So how could we redirect some of that money  
14 that's already in the system to fund programs that  
15 actually work for our students.

16 Q. And is that part of your new charge as an  
17 Assistant Superintendent I believe --

18 A. Yes.

19 Q. -- you mentioned?

20 A. Yes.

21 Q. All right. If you'd go to page 34.

22 A. Okay.

23 Q. Under the heading there, Opportunities to  
24 Collaborate and Leverage, do you see that?

25 A. Yes, I do.

1 Q. Is this an example of a list of things that  
2 you could do or OSPI could do to realign resources --

3 A. Yes, it is.

4 Q. -- to address the achievement gap or the  
5 opportunity gap?

6 A. Yes, it is.

7 Q. All right.

8 A. And they are things that maybe OSPI was even  
9 planning to do at the time, like, for example, CEDARS,  
10 the collection and review of meaningful and accurate --  
11 the very first bullet point. CEDARS is something that  
12 didn't exist last year but it has started this year.

13 So, really, kind of calling that out, because  
14 one of things that the committee felt was that we  
15 needed to do a better job of collecting data, while  
16 OSPI already had that in the works. So we called that  
17 out to the forefront.

18 Q. If you turn to the next page. I think this  
19 page 35 and 36 might have some of the statistics you  
20 were trying to recall.

21 And if I understand these benchmarks, as of  
22 2005, you found that 48 percent of African American  
23 students enter post-secondary programs, two- or four-  
24 year colleges --

25 A. Correct.

1 Q. -- is that right?

2 And, again, you set up some goals into the  
3 future trying to increase those ranges.

4 A. Yes.

5 Q. And the committee set up those goals for the  
6 same reason that you wouldn't be able to do it in a  
7 year?

8 A. Yes. Correct.

9 Q. If you could go to page 75.

10 A. Okay.

11 Q. This is a chart kind of trying to depict the  
12 achievement gap. I think you were referring to some of  
13 the schools with the highest concentration of African  
14 American students.

15 A. Yes.

16 Q. All right. And I see a note here, "Caution,  
17 other factors, e.g., poverty influences the observed  
18 gap."

19 A. Correct.

20 Q. Do you see that?

21 What other things besides money did the  
22 committee identify in addition to the poverty that  
23 influenced the gap that we found?

24 A. Like a parent's experience in higher  
25 education. So if we had a parent -- neither parent

1 was -- had been college educated or maybe just one  
2 parent had been college educated.

3           So a parent's experience in higher ed. Also  
4 a parent's experience with school, period. So parents  
5 who didn't have a positive experience themselves could  
6 contribute to kids not having a great experience with.  
7 Parents who are incarcerated could play a role. And  
8 that's not necessarily a poverty issue. But  
9 incarceration plays a huge role as well. Foster care  
10 plays a huge role.

11       Q.     Now, did I hear you correctly that the  
12 committee found that the achievement gap is widening?

13       A.     Yes.

14       Q.     Okay. So, if you could turn to page 79 and  
15 80, and just looking at the 10th grade WASL scores.

16       A.     Uh-huh.

17       Q.     And I believe what the committee is trying to  
18 depict here from 1999 to 2008 is where the gap is, say,  
19 for example, on page 79, 10th grade writing class  
20 results.

21       A.     Uh-huh.

22       Q.     Do you see that?

23       A.     Yes.

24       Q.     And it looks like in 1999 the gap was 23.7  
25 percent between African American students and White

1 students?

2 A. Wait. Where are you again?

3 Q. The left-hand side of the reading -- 10th  
4 grade reading (sic) WASL results.

5 A. Oh, I'm -- okay. So you're on 80.

6 Q. No, 79.

7 A. So this is writing results.

8 Q. Right. 10th grade writing.

9 A. Okay. And what was your question again?

10 Q. And so for 1999, the gap between African  
11 American students and White students was 23.7 percent.

12 A. Yes, I see that.

13 Q. And then going to 2008, the gap has dropped  
14 to 10.2 percent.

15 A. And, you know what, when we looked at the --  
16 so I was speaking about reading and math, we didn't  
17 really include -- when I'm thinking about the gap  
18 widening, we talked specifically about math and  
19 reading, so I really -- I don't know that I can speak  
20 to the writing --

21 Q. Okay.

22 A. -- results.

23 Q. Let's flip over --

24 A. Okay.

25 Q. -- again to the 10th grade reading, which is

1 on page 80.

2 A. Okay.

3 Q. And it looks like, in 1999, the gap was 32.2  
4 percent and, in 2008, it was 16.5 percent.

5 A. Okay. I was wrong there. If you look at the  
6 math though --

7 Q. Yeah, the math doesn't look so good. The  
8 math is kind of a problem for all students --

9 A. Right.

10 Q. -- right?

11 And, also, it looks like, for the Hispanic  
12 and Latino group of students, back on the 10th grade  
13 writing WASL results, it says gaps for other groups,  
14 1999.

15 Do you see the little box there?

16 A. Yes, uh-huh.

17 Q. And the Hispanic group, the gap is 25.3  
18 percent?

19 A. Uh-huh.

20 Q. And then in the box over on the bottom right-  
21 hand --

22 A. That's 14.0.

23 Q. -- it's 14 percent, right?

24 A. Uh-huh.

25 Q. So that gap is narrowed as well.

1       A.     Yes, I see that.

2       Q.     And then the same for reading -- 10th grade  
3 reading, the gap for Hispanic students was 32.3  
4 percent?

5       A.     Correct.

6       Q.     And then for Hispanic students was 17.2  
7 percent in 2008.

8       A.     Correct.

9       Q.     All right. So that gap had decreased as  
10 well, right?

11      A.     Yes.

12      Q.     Okay. And then, like African American  
13 students, there's still a problem in the math WASL.

14      A.     Correct.

15      Q.     And then on page 76.

16      A.     Okay.

17      Q.     In that sort of opening paragraph under WASL  
18 results, it appears that the committee, in the report,  
19 summarized that "African American students have  
20 improved over time. The gap is decreasing for reading  
21 and writing across all grade levels."

22             Do you see that?

23      A.     Yes.

24      Q.     "Math scores have improved but the gap is  
25 increasing at alarming rates."

1 A. Yes.

2 Q. And what you were speaking to?

3 A. That's what I was speaking to, yes.

4 Q. All right. Do you have Exhibit 295 in that  
5 notebook?

6 A. I do.

7 Q. It this Senate Bill 5973 that you were  
8 testifying about in response to Mr. Robb's questions?

9 A. Yes, I was.

10 MS. BASHAW: Your Honor --

11 Q. And just tell the court, if you would, what  
12 5973 is.

13 A. Really, there are two parts to 5973. There  
14 as a piece that -- where the Professional Educators  
15 Standards Board has been asked to convene a committee  
16 in order to establish standards for teachers around  
17 cultural competence and to place those standards at the  
18 appropriate level of the teacher's career.

19 So pre-service, first two years, professional  
20 certification, and then career educators. And take a  
21 look at all the standards that exist around the country  
22 and determine which ones were great, which ones should  
23 not even be considered, and then where should we place  
24 those. So who should be held accountable at what point  
25 in their teaching career for those standards.



1 Q. And that's the Professional Educators  
2 Standards Board --

3 A. Yes.

4 Q. -- that's supposed to develop these?

5 A. Yes.

6 Q. All right.

7 A. And then the other piece of that work is the  
8 Achievement Gap and Oversight and Accountability  
9 Committee. That is six members from the Legislature,  
10 the Office of the Education Ombudsman, OSPI, and then  
11 five representatives from the different ethnic  
12 communities, not necessarily folks that were on the  
13 achievement gap study groups, but folks that were  
14 selected by the Governor. Native Americans were able  
15 to select their own and then the other four were  
16 selected by the Governor. And those folks have come  
17 together with, really, two charges.

18 Number one charge is to synthesize the five  
19 reports, which that is just -- I mean, when the reports  
20 are each over 100 pages long and one of them is 300  
21 pages long, that's a monumental task in itself. And  
22 then they're supposed to make recommendations about,  
23 you know, what kinds of professional development should  
24 be happening, how could OSPI redirect some of its  
25 resources to better meet the needs of kids in the gap.

1           So there's a number of different things  
2 they're asked to make recommendations about.

3       Q.     And is that explained here in section two on  
4 page -- excuse me. Page three of Exhibit 295?

5       A.     Yes, it is.

6       Q.     Okay. And it looks like, as part of the  
7 representatives that would be on this committee, you  
8 indicated that Chairs and ranking minority members of  
9 the House and the Senate Education Committees?

10      A.     Correct.

11      Q.     And then one additional member from the House  
12 is appointed --

13      A.     Correct.

14      Q.     -- to this committee?

15      A.     Correct.

16      Q.     And one additional member of the Senate is  
17 appointed to --

18      A.     Correct.

19      Q.     -- this committee.

20      A.     Uh-huh.

21      Q.     So, all in all, it sounds like there will be  
22 six legislative --

23      A.     Legislative members.

24      Q.     -- members.

25      A.     Correct.

1 Q. And then a representative from the Office of  
2 the Education Ombudsman?

3 A. Correct.

4 Q. A representative from the Center for  
5 Improvement of Student Learning, and OSPI?

6 A. Yep.

7 Q. Is that you?

8 A. That's me and Randy. Randy and I are both  
9 sitting in the room, so --

10 Q. All right.

11 A. I'm actually staffing, so my office staff's  
12 this work.

13 Q. Okay.

14 A. So I'm in the room, too.

15 MS. BASHAW: Your Honor, respondents would  
16 offer Exhibit 295.

17 THE COURT: 295 is offered.

18 MR. ROBB: No objection, Your Honor.

19 THE COURT: 295 is admitted.

20 EXHIBIT ADMITTED

21 BY MS. BASHAW:

22 Q. Will this committee be providing any reports  
23 or information to the Quality Education Council that  
24 came out of 2261?

25 A. Not officially but we've already been

1 asked -- Senator McAuliffe has asked if she can make --  
2 she's actually asked us if she and someone else from  
3 the committee could make -- do a briefing for the QEC,  
4 so that will be happening.

5 Randy serves under Superintendent Dorn,  
6 serves on both committees. So he will also be able to  
7 really infuse the work that he's doing there with the  
8 work -- so there are actually three people on both  
9 committees.

10 So my hope is that we'll be able to do a lot  
11 of work together with those two committees.

12 Q. So it sounds like there will be, hopefully,  
13 some consistency between the two committees.

14 A. We are really hoping so.

15 Q. All right.

16 THE COURT: Ms. Bashaw, if you want to wrap  
17 up for the day, I don't know how much more you have,  
18 but --

19 MS. BASHAW: Yeah, I probably have -- I'm  
20 sorry.

21 THE WITNESS: Oh, you're killing me.

22 MS. BASHAW: -- 10 minutes -- 10, 15 minutes  
23 or so.

24 THE WITNESS: I beg of you, please don't make  
25 me drive up here again.

1                   (A discussion was had off the record between  
2 the court, the clerk, and the court reporter.)

3                   THE COURT:   Okay.   We can go to 4:25, but I  
4 want to leave an opportunity for Mr. Robb to do  
5 redirect.

6                   Do you think you have much in the way of  
7 redirect?

8                   MR. ROBB:   I'm sorry?

9                   THE COURT:   Do you think you'll have much in  
10 the way of redirect?   I'd like to let this witness go.  
11 We really cannot go past 4:30, and the clerk needs to  
12 get downstairs by 4:30.

13                  MR. ROBB:   Yeah, I don't think I'm going to  
14 have many questions, Your Honor.

15                  THE COURT:   All right.   Let's be as efficient  
16 as possible so we can let this witness go.

17                  MS. BASHAW:   Yes, Your Honor.   I will speed  
18 up.

19                  THE WITNESS:   Thank you, ladies.

20 BY MS. BASHAW:

21                  Q.       I'll trade you notebooks.   If you could look  
22 at Exhibit 470.

23                  A.       Okay.

24                  Q.       DO you recognize Exhibit 470?

25                  A.       I do.

1 Q. AND is this an announcement of several  
2 things, including your appointment as the Assistant  
3 Superintendent -- let's see.

4 A. For Student Achievement.

5 Q. -- for Student Achievement?

6 A. Yes.

7 Q. And is one of your charges in this position  
8 to address or manage the dropout issue?

9 A. Yes.

10 Q. And can you tell us a little bit about,  
11 briefly, what kind of efforts in this new position that  
12 you're doing around dropout.

13 A. Well, I've been working a lot with Annie  
14 Blackledge who runs our dropout -- Building Bridges  
15 Program. That really has been our greatest focus on  
16 dropouts. So I've worked with Robin Munson around  
17 data, but then really talking to Annie about how we can  
18 expand some of the great work that she's already doing  
19 and how we can incorporate some of those things into a  
20 statewide strategic plan.

21 But I would say that all five of the  
22 achievement gap reports also address dropouts. So  
23 we've been trying to incorporate what Annie's doing  
24 with students across the state in rural areas, urban  
25 areas, suburban areas to, really, kind of melding that

1 with what the recommendation stated in all the five  
2 achievement gap reports around dropout prevention.

3 Q. If you could look at Exhibit 471 --

4 A. Okay.

5 Q. -- in your notebook.

6 Why don't you describe for us just briefly,  
7 in your new role, what exactly is your responsibility  
8 around addressing the dropout issue?

9 A. Really, my role is to be the point person, so  
10 not necessarily to do all the work around dropouts but  
11 to be a point person really for student achievement.  
12 So I like to think about it as I am the continuous  
13 student engagement person. So, I hate the word  
14 achievement gap and I really don't like the word  
15 dropout either, because a lot of our kids are pushed  
16 out or their circumstances kind of force them to be in  
17 a position to drop out.

18 So, for me, I look at it as how can I provide  
19 some leadership and some direction around continuously  
20 engaging students throughout their career.

21 Q. If you could turn in Exhibit 471 to page 21.

22 A. Okay.

23 Q. We had some testimony earlier in the case  
24 from another witness about dropouts and confirmed  
25 dropouts and unknown dropouts, relating to one of these

1 charts.

2 A. Uh-huh.

3 Q. Can you describe for us what the location  
4 unknown means as it relates to dropouts?

5 A. Really, when we talk about dropouts, there  
6 are a number of students -- for example, my son could  
7 have been deemed a dropout because if you don't -- if a  
8 student were to move and not -- not tell a school that  
9 they've moved and then enroll somewhere else, sometimes  
10 students get lost in that process of moving from one  
11 place to another.

12 With the establishment of the new CEDARS data  
13 system, we'll be able to track students around our  
14 state from school to school. But up until this point,  
15 there have been kids who have gotten lost in the system  
16 because they moved to another part of the state and  
17 don't notify a school that they've left. And so that  
18 school then is not really sure what to do with their  
19 data, because how they dropped out, we don't know where  
20 to locate that kid. So it's really those kids that get  
21 lost in the mix sometimes that -- you know, maybe their  
22 name changes and we're not sure then how to -- schools  
23 don't have, really, a way to call around to all the  
24 district high schools in the state to find those kids.

25 So, it's really that matter of -- transience



1 plays a huge role in that. Kids moving from place to  
2 place and not really knowing for sure where that kid  
3 has landed.

4 Q. All right. And you mentioned CEDARS.

5 Is this the ability now to give students an  
6 individual identifier --

7 A. Yes.

8 Q. -- number?

9 A. Yes.

10 Q. And when did the state start using that?

11 A. September. This month actually.

12 Q. 2009?

13 A. Yeah, this school year. Yes.

14 Q. And prior to getting some implementation with  
15 this new system, is there any cautionary words that are  
16 provided in these dropout reports around understanding  
17 these numbers?

18 A. Well, the difficulty with the dropouts is  
19 it's really hard to determine all the time exactly how  
20 many kids have dropped out at a particular point. So,  
21 you know, that is the caution sometimes in looking at  
22 numbers is sometimes they can be misleading when we  
23 talk about dropouts.

24 A lot of times people don't realize that, for  
25 example, a kid who gets a GED is actually termed a

1 dropout. So that becomes really dangerous because this  
2 kid is actually able to go get a job now. They've  
3 gotten their certificate, but we call them a dropout.

4 So there's some caution as people look at  
5 those numbers. You have to understand really what does  
6 dropout mean. It means that they didn't complete all  
7 12 years of school and get a certificate or diploma.

8 Q. All right. On page 21, the -- well, do you  
9 have an understanding as to what age in our state the  
10 school districts or the state can no longer force a  
11 child to stay in school?

12 A. At 18. At age 18.

13 Q. So whether they graduated or not, if they're  
14 18, the state can't force a child to stay in school.

15 A. Correct.

16 Q. Okay. I'd handed you RCW 28A.225.010.

17 Do you see that?

18 A. Yes.

19 Q. And to speed things up, I highlighted the  
20 first section. And it states, "All parents in this  
21 state of any child eight years of age and under 18  
22 years of age shall cause the child to attend public  
23 school."

24 A. Correct.

25 Q. Would this be the basis --

1 A. Yes.

2 Q. Of the understanding --

3 A. Yes.

4 Q. -- you just provided?

5 A. Yes.

6 Q. All right. So if we look at page 21 of  
7 Exhibit 471, under the confirmed dropout figure of  
8 6,804 -- do you see that --

9 A. Yes, I do.

10 Q. -- for all students?

11 Do you know how many of those students for  
12 this period of time were 18 or over?

13 A. I do know. I can see the number in my head.  
14 Why can't I read it. I can't read it in my mind's eye  
15 right now. I can't remember the number.

16 Q. Do you remember approximately what the number  
17 is?

18 A. I don't -- I don't want to give a number  
19 because I really don't remember. I've seen so many  
20 numbers now its a jumble in my head.

21 Q. All right. Would there be information that  
22 your staff developed that would refresh your memory?

23 A. Yes.

24 Q. And what would that be?

25 A. So Lisa Ireland would have had that number.

1 Q. Okay. And did she provide that number to  
2 you --

3 A. Yes.

4 Q. -- on the document?

5 A. Yes. Between dropout numbers, achievement  
6 gap numbers, they all kind of march together at a  
7 certain point.

8 MS. BASHAW: May I approach, Your Honor?

9 THE COURT: You may.

10 THE WITNESS: Is it 1609?

11 BY MS. BASHAW:

12 Q. Is this the information that Ms. Ireland --

13 A. Yes.

14 Q. -- prepared for you?

15 A. Yes.

16 Q. And does that refresh your memory --

17 A. Yes. Thank you.

18 Q. -- as to how many of the kids in the  
19 confirmed dropout figure were 18 years or older?

20 A. Yes.

21 Q. And what's the number?

22 A. So we have 6,409.

23 Q. So, out of 6,804 confirmed dropouts, 6409  
24 were 18 years or older.

25 A. Or older, correct.

1 Q. And this would be the group of students that  
2 we wouldn't be able to force --

3 A. To stay in school.

4 Q. -- to stay in school.

5 A. Correct.

6 Q. If you look at page 12 of Exhibit 471 under  
7 the graduation rate goals --

8 A. Yes.

9 Q. -- do you see that section?

10 A. Uh-huh.

11 Q. This section talks about the goal of trying  
12 to achieve a graduation rate of 85 percent as opposed  
13 to --

14 A. Yes.

15 Q. -- 100 percent. Do you see that?

16 A. Yes, I do.

17 Q. And do you have an understanding as to where  
18 this benchmark comes from?

19 A. (Reviewing.) Really, looking at the ways  
20 that those goals -- that those numbers have increased  
21 over time. So it's just a projected figure that if we  
22 were to continue in the current trend, that that's  
23 where we would be.

24 Q. All right. And it appears to be also tied to  
25 the U.S. Department of Education --

1 A. Yes.

2 Q. -- Accountability staff?

3 A. Yes.

4 Q. All right. And so that goal is 85 percent  
5 after 2014?

6 A. Correct.

7 Q. And do you have a recollection as to, for all  
8 students, what our graduation rate is for Washington?

9 A. We have somewhere between five and six.  
10 Five-and-a-half percent dropout rate currently per  
11 year, which ends up being about 21 percent -- 21, 22  
12 percent.

13 Q. And that's the dropout --

14 A. Over the cohort, yes.

15 Q. Do you have a recollection as to what the  
16 graduation rate is for all students in our state?

17 A. 70-something percent.

18 Q. All right.

19 A. And I don't remember the exact figure, but  
20 70-something percent.

21 Q. You testified in response to some questions  
22 from Mr. Robb about African American students  
23 disproportionally ending up in special education  
24 classes --

25 A. Correct.

1 Q. -- or programs and not being placed into  
2 gifted programs?

3 Is it the school district that makes those  
4 decisions as to where to place kids?

5 A. It's the school itself that makes the  
6 decision.

7 Q. The school itself makes it.

8 A. Yes.

9 MS. BASHAW: I don't have anything further.

10 THE COURT: Thank you, Ms. Bashaw.

11 Mr. Robb?

12 THE WITNESS: Please, fast. Speedy Gonzales.

13 REDIRECT EXAMINATION

14 BY MR. ROBB:

15 Q. Okay. Well, I'm going to try to make it  
16 really quick.

17 A. Okay.

18 Q. So you called it -- you've called it a couple  
19 times today the opportunity gap --

20 A. Yes.

21 Q. -- and achievement gap.

22 A. Uh-huh.

23 Q. Why is that?

24 A. Because African American children don't --  
25 haven't always had the same opportunities for success

1 that Caucasians do.

2 Q. And did you conclude, as a committee, that  
3 there is a gap between the educational opportunities as  
4 African American students and the educational  
5 opportunities that White students have?

6 A. Yes.

7 Q. Okay. And is that a significant gap?

8 A. Yes.

9 Q. Okay. Is significantly a good gap or  
10 significantly a bad gap?

11 A. Bad gap, something needs to be done.

12 Q. Okay. And does something that needs to be  
13 done, would be detailed at least in part --

14 A. Yes.

15 Q. -- in your report.

16 A. Yes. Correct.

17 Q. But this report is just a start.

18 A. It is. It's just the beginning.

19 (Interruption by the court reporter.)

20 THE COURT: I know you're rushing through  
21 this, but the court reporter --

22 THE WITNESS: I'm sorry.

23 THE COURT: -- needs a question and an  
24 answer.

25 THE WITNESS: I'm sorry.



1 MR. ROBB: I'm sorry.

2 BY MR. ROBB:

3 Q. You mentioned other factors that might effect  
4 the achievement gap. You talked about, oh, poverty,  
5 school period, incarceration, et cetera.

6 Do those problems have anything themselves to  
7 do with education?

8 A. Yes. I said before that education or lack of  
9 education can lead to dropouts, can lead to  
10 incarceration, and then it feeds back on itself.

11 So if you have incarceration, then they raise  
12 children who -- so, it really does. It's a vicious  
13 cycle.

14 Q. So it's a cycle.

15 A. Yes.

16 Q. Is there anything -- what, if anything, can  
17 we do to break that cycle?

18 A. Keep more kids in school.

19 Q. Through education would be the way --

20 A. Education would be the answer -- the number  
21 one answer.

22 Q. You mentioned the importance of Building  
23 Bridges.

24 Do you remember that?

25 A. Yes.

1 Q. Okay. Why is it important? I mean, is the  
2 dropout rate, as it currently stands, acceptable?

3 A. No. If any kids drop out, it's not  
4 acceptable.

5 Q. Okay. And we have more than just a couple  
6 kids --

7 A. Yeah --

8 Q. -- dropping out at this point?

9 A. -- we do.

10 Q. Okay. Why is it important to reduce the  
11 dropout rate?

12 A. I mean, on a -- I guess on a social justice  
13 level, we have a responsibility, as a nation, to  
14 educate all children. So we have an obligation to keep  
15 all kids, or as many kids as possible, in school.

16 But economically, we also -- it's bad for our  
17 state. We're losing -- losing the numbers of folks who  
18 could contribute to the economy by allowing so many  
19 kids to drop out and not engaging as many students as  
20 possible.

21 Q. And are there significantly more African  
22 American students dropping out than, say, Caucasian  
23 students?

24 A. Percentage wise, yes. There are less of us  
25 in the state to drop out, but --

1 Q. But percentage.

2 A. -- percentage wise, yes.

3 Q. Okay. And is that something that the  
4 committee determined could be effective with additional  
5 resources brought --

6 A. Yes. Additional programs and attention paid  
7 to it, yes.

8 Q. This chart that was handed to you to refresh  
9 your recollection, that was prepared by Lisa Ireland;  
10 is that correct?

11 A. Yes. Yes.

12 Q. Why did Lisa Ireland prepare this chart?

13 A. Just so that we could see clearly what are  
14 the reasons that kids drop out beyond the age that  
15 we're responsible to provide education to them.

16 Q. Can you look at the second page of this  
17 report, please?

18 A. Sure.

19 Q. The third line from the bottom talks about  
20 the abstract that was created, it says at the end, "Per  
21 the requested guidelines from the AG Office"?

22 A. Yes, correct.

23 Q. What's the AG Office?

24 A. I would assume the Attorney General's Office.

25 Q. The State Attorney General's Office?

1 A. Yes.

2 Q. Was this created specifically for this case?

3 A. In this format, correct.

4 Q. Okay.

5 A. In this format.

6 Q. All right. Do you know who provided the  
7 instructions on how to create this?

8 A. I do not know exactly who.

9 Q. Okay. Do you know what the guidelines were  
10 that were requested?

11 A. Just so that we could see all of the age  
12 levels and -- because all of the data that we  
13 demonstrated -- that is demonstrated in the final  
14 report of the dropout report that's in the -- that we  
15 already looked at today -- I don't remember which  
16 exhibit -- lumps everyone together. So, specifically,  
17 as a way to look at those desegregated numbers by age.

18 Q. Does it have an impact on the kids -- on a  
19 student's life -- put it this way.

20 Does it matter if a kid drops out of high  
21 school at 18, 19, or 20?

22 A. I think so. It matters if they drop out at  
23 all.

24 Q. It matters if they drop out at all.

25 A. Yeah. Period.

1 Q. So it's not the age. It's the fact of  
2 dropping out.

3 A. Yes.

4 Q. And the -- actually, strike that.

5 MR. ROBB: All right. Thank you.

6 THE WITNESS: Okay. I'm flying.

7 MR. ROBB: Well, I don't know.

8 THE WITNESS: Oh, no.

9 THE COURT: Ms. Bashaw, we really need to  
10 close exam.

11 MS. BASHAW: I understand, Your Honor, and  
12 I've got one quick, because I made an error in --

13 THE COURT: All right. Let's go ahead and  
14 get it on the record.

15 RECROSS-EXAMINATION

16 BY MS. BASHAW:

17 Q. Ms. Jones, looking at the information that  
18 Ms. Ireland prepared for you --

19 A. Yes.

20 Q. -- and I think I might have -- trying to  
21 speed through this -- looked at it incorrectly.

22 The confirmed dropout rate, if you're looking  
23 at Ms. Ireland's chart, are those under the GED  
24 completers, and the list of D-0 through D-9? Do you  
25 see that?

1 A. Yes. Yes. Yes. Uh-huh.

2 Q. And so the total column would just be 325

3 plus 788 --

4 A. Plus 203.

5 Q. -- plus 203 -- plus 809 --

6 A. Okay. Okay. Correct. Sorry.

7 Q. Let me start over. 325 plus 788 plus 70 plus

8 809 plus 456 plus 419 plus 9 plus 51 plus 208 plus 241

9 plus 9, would that be the confirmed group?

10 A. Yes.

11 Q. All right. And so I apologize. I directed

12 you to the total number --

13 A. Got it.

14 Q. -- which Ms. Ireland represents here includes

15 the unknowns and the unconfirmed transfers, right?

16 A. Correct.

17 Q. And that total number is 6,409.

18 A. Correct.

19 Q. And the confirmed ones are the --

20 A. Above.

21 Q. -- the ones above, and if you add all those

22 numbers up, that's the number we come up with.

23 A. Correct.

24 MS. BASHAW: All right. Thank you.

25 Your Honor, unless counsel would object,

1 it may make more sense to admit the exhibit. I hadn't  
2 intended to do it, but --

3 MR. ROBB: Your Honor, we would object to  
4 that. We haven't had a chance to look at this. It was  
5 prepared after this trial started.

6 THE COURT: It was prepared for purposes of  
7 litigation. It wasn't produced --

8 MR. ROBB: Yes.

9 THE COURT: All right. I will reserve on it,  
10 but I'm not inclined to admit it. But I will make that  
11 decision tomorrow. I want to let the lower bench go.  
12 I want to let this witness go.

13 MS. BASHAW: Thank you.

14 THE COURT: Mr. Robb, anything further?

15 MR. ROBB: No, Your Honor.

16 THE COURT: All right. Are you asking  
17 Ms. Jones to be excused?

18 MR. ROBB: Yes, Your Honor.

19 THE COURT: Ms. Bashaw, any objection?

20 MS. BASHAW: No objection.

21 THE COURT: Ms. Jones, thank you.

22 THE WITNESS: Thank you so much.

23 THE COURT: I want to thank the court  
24 reporter and the clerk also for staying.

25 So you may step down. You are excused

1 at this time.

2 THE WITNESS: Thank you.

3 THE COURT: All right. We'll go off the  
4 record, and we're not going to adjourn. I'll have a  
5 couple matters for counsel off the record, and the  
6 lower bench is excused at this time.

7 (Whereupon proceedings adjourned.)

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